

House File 217 - Introduced

HOUSE FILE 217

BY HEATON

A BILL FOR

1 An Act relating to the creation of a mental health advocate
2 division in the department of inspections and appeals and
3 including effective date provisions.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

DEPARTMENTAL RESPONSIBILITY FOR MENTAL HEALTH ADVOCATES

Section 1. NEW SECTION. 10A.901 Definitions.

As used in this article, unless the context otherwise requires:

1. "*Administrator*" means the person coordinating the administration of this division.

2. "*Division*" means the mental health advocate division of the department of inspections and appeals.

Sec. 2. NEW SECTION. 10A.902 Duties of administrator.

The administrator shall coordinate the division's conduct of the mental health advocate program as provided by section 229.19 and other applicable law. The administrator's duties may include but are not limited to all of the following:

1. Recommending the hiring of persons to serve as mental health advocates and other division staff and identifying qualifications. The minimum qualifications for a mental health advocate whose initial appointment commences on or after July 1, 2013, shall be a bachelor's degree from an accredited school, college, or university or related postsecondary education coursework in social science, education, nursing, or other related field and at least one year of work experience in mental health treatment.

2. Training and supervising division staff.

3. Providing and regularly updating a list of those persons qualified to serve as a mental health advocate for the service areas utilized by the mental health advocate program. If deemed to be prudent by the administrator in order to improve or maintain the quality of services, the administrator or the administrator's designee may petition the court to change the advocate appointed by the court or to transfer the venue of the appointment or the hospitalization proceeding as provided in section 229.44.

4. Administering program additions and expansions, including providing advocate services for persons with a

1 substance-related disorder and persons found not guilty
2 by reason of insanity, if such additions or expansions are
3 authorized and funded.

4 5. Developing and implementing a case weight system for use
5 in appointing and compensating advocates.

6 6. Administering case reviews and audits.

7 Sec. 3. TRANSITION.

8 1. The department of inspections and appeals shall commence
9 organizational activities during the fiscal year beginning July
10 1, 2013, as necessary to fully implement this division and
11 assume responsibility for mental health advocates as provided
12 in this division and division II of this Act on July 1, 2014.

13 2. If necessary for the purposes of subsection 1, the
14 department of inspections and appeals may adopt emergency
15 rules under section 17A.4, subsection 3, and section 17A.5,
16 subsection 2, paragraph "b", to implement the provisions of
17 division II of this Act on July 1, 2014, and the rules shall
18 be effective immediately upon filing unless a later date is
19 specified in the rules. Any rules adopted in accordance with
20 this section shall also be published as a notice of intended
21 action as provided in section 17A.4.

22 DIVISION II

23 IMPLEMENTATION

24 Sec. 4. Section 225C.4, subsection 1, paragraph m, Code
25 2013, is amended to read as follows:

26 *m.* Provide consultation and technical assistance to
27 patients' mental health advocates appointed pursuant to
28 section 229.19, in cooperation with the judicial branch and
29 the department of inspections and appeals, and to the resident
30 advocate committees appointed for health care facilities
31 pursuant to section 135C.25.

32 Sec. 5. Section 226.31, Code 2013, is amended to read as
33 follows:

34 **226.31 Examination by court — notice.**

35 Before granting the order authorized in section 226.30

1 the court or judge shall investigate the allegations of the
 2 petition and before proceeding to a hearing on the allegations
 3 shall require notice to be served on the attorney who
 4 represented the patient in any prior proceedings under sections
 5 229.6 to 229.15 ~~or the~~ and to any mental health advocate
 6 appointed for the patient under section 229.19, or in the case
 7 of a patient who entered the hospital voluntarily, on any
 8 relative, friend, or guardian of the person in question of the
 9 filing of the application. At the hearing the court or judge
 10 shall appoint a guardian ad litem for the person, if the court
 11 or judge deems such action necessary to protect the rights
 12 of the person. The guardian ad litem shall be a practicing
 13 attorney.

14 Sec. 6. Section 229.2, subsection 1, paragraph b,
 15 subparagraph (6), Code 2013, is amended to read as follows:

16 (6) Upon approval of the admission of a minor over the
 17 minor's objections, the juvenile court shall appoint an
 18 individual to act as ~~an~~ the mental health advocate representing
 19 ~~the interests of~~ for the minor ~~in the same manner as an~~
 20 ~~advocate representing the interests of patients involuntarily~~
 21 ~~hospitalized pursuant to~~ in accordance with section 229.19.

22 Sec. 7. Section 229.9A, Code 2013, is amended to read as
 23 follows:

24 **229.9A ~~Advocate~~ Mental health advocate informed — hearings.**

25 The court shall direct the clerk to furnish the office
 26 of the mental health advocate ~~of the respondent's county of~~
 27 ~~legal settlement~~ designated for the court by the department
 28 of inspections and appeals with a copy of application and any
 29 order issued pursuant to section 229.8, subsection 3. The
 30 mental health advocate designated for the court may attend
 31 ~~the hospitalization~~ any court hearing of any involving the
 32 ~~respondent for whom the advocate has received notice of a~~
 33 ~~hospitalization hearing.~~

34 Sec. 8. Section 229.12, subsection 2, Code 2013, is amended
 35 to read as follows:

1 2. All persons not necessary for the conduct of the
2 proceeding shall be excluded, except that the court may admit
3 persons having a legitimate interest in the proceeding and
4 shall permit the mental health advocate from the respondent's
5 county of legal settlement designated for the court by the
6 department of inspections and appeals to attend the hearing.
7 Upon motion of the county attorney, the judge may exclude
8 the respondent from the hearing during the testimony of any
9 particular witness if the judge determines that witness's
10 testimony is likely to cause the respondent severe emotional
11 trauma.

12 Sec. 9. Section 229.14A, subsection 1, Code 2013, is amended
13 to read as follows:

14 1. With respect to a chief medical officer's report made
15 pursuant to section 229.14, subsection 1, paragraph "b", "c",
16 or "d", or any other provision of this chapter related to
17 involuntary commitment for which the court issues a placement
18 order or a transfer of placement is authorized, the court shall
19 provide notice to the respondent, and the respondent's attorney
20 or, and any mental health advocate appointed for the respondent
21 pursuant to section 229.19 concerning the placement order
22 and the respondent's right to request a placement hearing to
23 determine if the order for placement or transfer of placement
24 is appropriate.

25 Sec. 10. Section 229.14A, subsection 5, paragraph c, Code
26 2013, is amended to read as follows:

27 c. If the respondent's attorney has withdrawn pursuant to
28 ~~section 229.19~~, the court shall appoint an attorney for the
29 respondent in the manner described in section 229.8, subsection
30 1.

31 Sec. 11. Section 229.15, subsection 6, Code 2013, is amended
32 to read as follows:

33 6. Upon receipt of any report required or authorized by
34 this section the court shall furnish a copy to the patient's
35 attorney, ~~or alternatively~~ and to the mental health advocate

1 appointed ~~as required by section 229.19~~ for the patient. The
 2 court shall examine the report and take the action thereon
 3 which it deems appropriate. Should the court fail to receive
 4 any report required by this section or section 229.14 at the
 5 time the report is due, the court shall investigate the reason
 6 for the failure to report and take whatever action may be
 7 necessary in the matter.

8 Sec. 12. Section 229.19, Code 2013, is amended to read as
 9 follows:

10 **229.19 Advocates Mental health advocates — duties —**
 11 **compensation — state and county liability.**

12 1. ~~a. In each county with a population of three hundred~~
 13 ~~thousand or more inhabitants the board of supervisors shall~~
 14 ~~appoint an individual who has demonstrated by prior activities~~
 15 ~~an informed concern for the welfare and rehabilitation of~~
 16 ~~persons with mental illness, and who is not an officer or~~
 17 ~~employee of the department of human services nor of any agency~~
 18 ~~or facility providing care or treatment to persons with mental~~
 19 ~~illness, to act as an advocate representing the interests of~~
 20 ~~patients involuntarily hospitalized by the court, in any matter~~
 21 ~~relating to the patients' hospitalization or treatment under~~
 22 ~~section 229.14 or 229.15. In each county with a population of~~
 23 ~~under three hundred thousand inhabitants, the chief judge of~~
 24 ~~the judicial district encompassing the county shall appoint~~
 25 ~~the advocate. For the purposes of this section, "division"~~
 26 means the mental health advocate division of the department of
 27 inspections and appeals.

28 ~~b. The court or, if the advocate is appointed by the county~~
 29 ~~board of supervisors, the board shall assign the advocate~~
 30 ~~appointed from a patient's county of legal settlement to~~
 31 ~~represent the interests of the patient. If a patient has~~
 32 ~~no county of legal settlement, the court or, if the advocate~~
 33 ~~is appointed by the county board of supervisors, the board~~
 34 ~~shall assign the advocate appointed from the county where the~~
 35 ~~hospital or facility is located to represent the interests of~~

1 ~~the patient.~~

2 ~~c. The advocate's responsibility with respect to any patient~~
 3 ~~shall begin at whatever time the attorney employed or appointed~~
 4 ~~to represent that patient as respondent in hospitalization~~
 5 ~~proceedings, conducted under sections 229.6 to 229.13, reports~~
 6 ~~to the court that the attorney's services are no longer~~
 7 ~~required and requests the court's approval to withdraw as~~
 8 ~~counsel for that patient. However, if~~

9 b. If the patient is found to be seriously mentally impaired
 10 at the hospitalization hearing, the attorney representing the
 11 patient shall automatically be relieved of responsibility in
 12 the case and an a mental health advocate shall be assigned to
 13 appointed for the patient at the conclusion of the hearing
 14 unless the attorney indicates an intent to continue the
 15 attorney's services and. The court shall appoint the advocate
 16 from a list of qualified persons provided to the court by the
 17 administrator of the division of mental health advocates of
 18 the department of inspections and appeals in accordance with
 19 section 10A.902. The advocate's responsibility with respect
 20 to a patient shall begin when the advocate is appointed for
 21 the patient. The attorney representing the patient shall
 22 automatically be relieved of responsibility at the conclusion
 23 of the hearing unless the attorney requests to continue
 24 representation and the court so directs authorizes the attorney
 25 to remain on the case. If the court directs the attorney to
 26 remain on the case, the attorney shall assume all the duties
 27 of an advocate cooperate with the advocate appointed for the
 28 patient. The clerk shall furnish the advocate with a copy of
 29 the court's order approving the withdrawal or continuation of
 30 the attorney and shall inform the patient of the name of the
 31 patient's advocate.

32 ~~d. c.~~ c. With regard to each patient whose interests the
 33 for whom a mental health advocate is required to represent
 34 appointed pursuant to this section, the advocate's duties shall
 35 include all of the following:

1 (1) To review each report submitted pursuant to sections
2 229.14 and 229.15.

3 (2) ~~If the advocate is not an attorney, to~~ To advise the
4 court at any time it appears that the services of an attorney
5 are required to properly safeguard the patient's interests.

6 (3) To be readily accessible to communications from the
7 patient and to originate communications with the patient within
8 five days of the patient's commitment.

9 (4) To visit the patient within fifteen days of the
10 patient's commitment and periodically thereafter.

11 (5) To communicate with medical personnel treating the
12 patient and to review the patient's medical records pursuant
13 to section 229.25.

14 (6) To file with the court and the division quarterly
15 reports, and additional reports as the advocate feels necessary
16 or as required by the court or the division, in a form
17 prescribed by the court or the division, as applicable. The
18 reports shall state what actions the advocate has taken with
19 respect to each patient and the amount of time spent.

20 (7) To utilize the related best practices for the duties
21 identified in this paragraph "~~d~~" "c" developed and promulgated
22 by the judicial council.

23 ~~e.~~ d. An Subject to the availability of funding
24 appropriated for this purpose, a mental health advocate may
25 also be appointed pursuant to this section for an individual
26 who has been diagnosed with a co-occurring mental illness and
27 ~~substance-related~~ substance-related disorder.

28 2. The hospital or facility to which a patient is committed
29 shall grant all reasonable requests of the patient's mental
30 health advocate to visit the patient, to communicate with
31 medical personnel treating the patient, and to review the
32 patient's medical records pursuant to section 229.25. An
33 advocate shall not disseminate information from a patient's
34 medical records to any other person unless done for official
35 purposes in connection with the advocate's duties pursuant to

1 this chapter or when required by law.

2 3. ~~The court or, if the advocate is appointed by the county~~
 3 ~~board of supervisors, the board~~ division shall prescribe
 4 provide reasonable compensation for the services of the
 5 advocate in accordance with section 10A.902. ~~The compensation~~
 6 ~~shall be based upon the reports filed by the advocate with~~
 7 ~~the court. The advocate's compensation shall be paid by the~~
 8 ~~county in which the court is located, either on order of the~~
 9 ~~court or, if the advocate is appointed by the county board of~~
 10 ~~supervisors, on the direction of the board. If the advocate~~
 11 ~~is appointed by the court, the advocate is an employee of~~
 12 ~~the state for purposes of chapter 669. If the advocate is~~
 13 ~~appointed by the county board of supervisors, the advocate is~~
 14 ~~an employee of the county for purposes of chapter 670. If the~~
 15 ~~patient or the person who is legally liable for the patient's~~
 16 ~~support is not indigent, the board~~ division shall recover
 17 the costs of compensating the advocate from that person. If
 18 ~~that person has an income level as determined pursuant to~~
 19 ~~section 815.9 greater than one hundred percent but not more~~
 20 ~~than one hundred fifty percent of the poverty guidelines,~~
 21 ~~at least one hundred dollars of the advocate's compensation~~
 22 ~~shall be recovered in the manner prescribed by the county~~
 23 ~~board of supervisors. If that person has an income level as~~
 24 ~~determined pursuant to section 815.9 greater than one hundred~~
 25 ~~fifty percent of the poverty guidelines, at least two hundred~~
 26 ~~dollars of the advocate's compensation shall be recovered in~~
 27 ~~substantially the same manner prescribed by the county board of~~
 28 ~~supervisors as provided in section 815.9.~~

29 Sec. 13. Section 229.25, subsection 1, paragraph a,
 30 subparagraph (1), Code 2013, is amended to read as follows:

31 (1) The information is requested by a licensed physician,
 32 attorney, or the mental health advocate who provides appointed
 33 for the person. The requester must provide the chief medical
 34 officer with a written waiver signed by the person about whom
 35 the information is sought.

1 Sec. 14. TRANSITION OF EMPLOYEE RIGHTS OF FORMER COUNTY
2 EMPLOYEES.

3 1. If appointed by the director of the department of
4 inspections and appeals as a mental health advocate pursuant
5 to section 10A.902, county employees paid for mental health
6 advocate services under section 229.19 shall become employees
7 of the department of inspections and appeals effective July
8 1, 2014, and the department shall assume all costs associated
9 with the functions of the employees on that date. Employees
10 who were paid salaries by the counties immediately prior to
11 becoming state employees as a result of this Act shall not
12 forfeit accrued vacation, accrued sick leave, or benefits
13 related to longevity of service, except as provided in this
14 section.

15 2. The department of inspections and appeals, after
16 consulting with the department of administrative services,
17 shall adopt rules to provide for the following:

18 a. A person referred to in subsection 1 shall have to the
19 person's credit as a state employee commencing on the date of
20 becoming a state employee the number of accrued vacation days
21 that was credited to the person as a county employee as of the
22 end of the day prior to becoming a state employee.

23 b. Each person referred to in subsection 1 shall have to
24 the person's credit as a state employee commencing on the
25 date of becoming a state employee the number of accrued days
26 of sick leave that was credited to the person as a county
27 employee as of the end of the day prior to becoming a state
28 employee. However, the number of days of sick leave credited
29 to a person under this subsection and eligible to be taken
30 when sick or eligible to be received upon retirement shall not
31 respectively exceed the maximum number of days, if any, or the
32 maximum dollar amount as provided in section 70A.23 that state
33 employees generally are entitled to accrue or receive according
34 to rules in effect as of the date the person becomes a state
35 employee.

1 c. Commencing on the date of becoming a state employee, each
2 person referred to in subsection 1 is entitled to claim the
3 person's most recent continuous period of service in full-time
4 county employment as full-time state employment for purposes
5 of determining the number of days of vacation which the person
6 is entitled to earn each year. The actual vacation benefit,
7 including the limitation on the maximum accumulated vacation
8 leave, shall be determined as provided in section 70A.1
9 according to rules in effect for state employees of comparable
10 longevity, irrespective of any greater or lesser benefit as a
11 county employee.

12 3. Persons referred to in subsection 1 who were covered
13 by county employee life insurance and accident and health
14 insurance plans prior to becoming state employees in accordance
15 with this section shall be permitted to apply prior to becoming
16 state employees for life insurance and health and accident
17 insurance plans that are available to state employees so that
18 those persons do not suffer a lapse of insurance coverage as
19 a result of this section. The department of inspections and
20 appeals, after consulting with the department of administrative
21 services, shall prescribe rules and distribute application
22 forms and take other actions as necessary to enable those
23 persons to elect to have insurance coverage that is in effect
24 on the date of becoming state employees. The actual insurance
25 coverage available to a person shall be determined by the plans
26 that are available to state employees, irrespective of any
27 greater or lesser benefits that may have been available to the
28 person as a county employee.

29 4. Commencing on the date of becoming a state employee, each
30 person referred to in subsection 1 is entitled to claim the
31 person's most recent continuous period of service in full-time
32 county employment as full-time state employment for purposes of
33 determining disability benefits as provided in section 70A.20
34 according to rules in effect for state employees of comparable
35 longevity, irrespective of any greater or lesser benefit that

1 may have been available to the person as a county employee.

2 Sec. 15. EFFECTIVE DATE. This division of this Act takes
3 effect July 1, 2014.

4 EXPLANATION

5 This bill creates a mental health advocate division in
6 the department of inspections and appeals in order for the
7 department to become the administrative agency for mental
8 health advocates. Under current law, except for one county
9 with a population of 300,000 or more inhabitants where the
10 advocate is appointed by the county, mental health advocates
11 are appointed by the chief judge of a judicial district and all
12 advocate positions are funded by the counties. The bill is
13 organized into divisions.

14 DEPARTMENTAL RESPONSIBILITY FOR MENTAL HEALTH ADVOCATES.

15 This division establishes a mental health advocate division in
16 the department of inspections and appeals and specifies duties
17 for the division administrator. A transition provision directs
18 the department to commence organizational activities during FY
19 2013-2014 as necessary to fully implement the new departmental
20 division and all of the bill's division II provisions on July
21 1, 2014. The department is granted emergency rulemaking
22 authority if necessary to achieve the implementation date.

23 This division takes effect July 1, 2013.

24 IMPLEMENTATION. This division provides for implementation
25 of the change in administration of the mental health advocates
26 on July 1, 2014, including conforming changes to various Code
27 sections.

28 Code section 225C.4, relating to the duties of the
29 administrator of the mental health and disability services
30 division of the department of human services, is amended to
31 correct a reference to mental health advocates and to include
32 the department of inspections and appeals in a duty for
33 providing consultation and technical assistance to advocates.

34 Code section 226.31, relating to an application for a court
35 order for transfer of a dangerous patient from a state mental

1 health institute, is amended to correct a reference to the
2 advocate to be included in a notice of a hearing.

3 Code section 229.2, relating to admissions of juvenile
4 mental health patients, is amended to correct a reference to
5 the appointment of a mental health advocate for juveniles
6 involuntarily committed.

7 Code section 229.9A, relating to requirements for the clerk
8 of court to notify a mental health advocate of application
9 and order information, is amended to correct a reference to
10 the advocate, to eliminate a reference to county of legal
11 settlement, and to authorize the advocate to attend any court
12 hearing involving the respondent.

13 Code section 229.12, relating to the procedure for
14 hospitalization hearings, is amended to correct a reference to
15 the advocate and to eliminate a reference to county of legal
16 settlement.

17 Code section 229.14A, relating to notice requirements
18 for involuntary commitment placement orders and transfers,
19 is amended to require notice to correct a reference to the
20 advocate and to eliminate a reference to a procedure for
21 withdrawal of an attorney that is revised by the bill.

22 Code section 229.15, relating to the periodic reports
23 required when hospitalization of a patient is continued by
24 court order, is amended to require the report to be provided to
25 the advocate.

26 Code section 229.19, the primary Code provision for
27 mental health advocates, is extensively revised to insert
28 the new department of inspections and appeals division in
29 place of the counties. The advocate is to be appointed by
30 the court from a list of qualified persons provided by the
31 division administrator. A procedure for continuation of the
32 respondent's attorney when a patient is found to be seriously
33 mentally impaired is revised to require the attorney to
34 cooperate with the patient's advocate instead of assuming the
35 duties of an advocate. Responsibility for compensation of

1 the mental health advocate is shifted to the division and the
2 division is required to recover the costs of the mental health
3 advocate if the person is not indigent.

4 Code section 229.25, relating to exceptions for release of
5 medical records maintained by a hospital or other treatment
6 facility, is amended to correct a reference to the advocate
7 regarding the release of the records to the advocate when the
8 patient has signed a waiver.

9 The bill includes a transition section outlining sick time,
10 vacation leave, and health, life, and disability insurance
11 rights of county employees who become employees of the
12 department of inspections and appeals in accordance with the
13 bill.

14 This division takes effect July 1, 2014.